

**LEGISLATIVE
RESEARCH COMMISSION**

COMMITTEE ON CRIMINAL LAW



**REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27601-1096



January 11, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on Criminal Law. The report was prepared by the Legislative Research Commission's Committee on Criminal Law pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Handwritten signature of Daniel T. Blue, Jr.

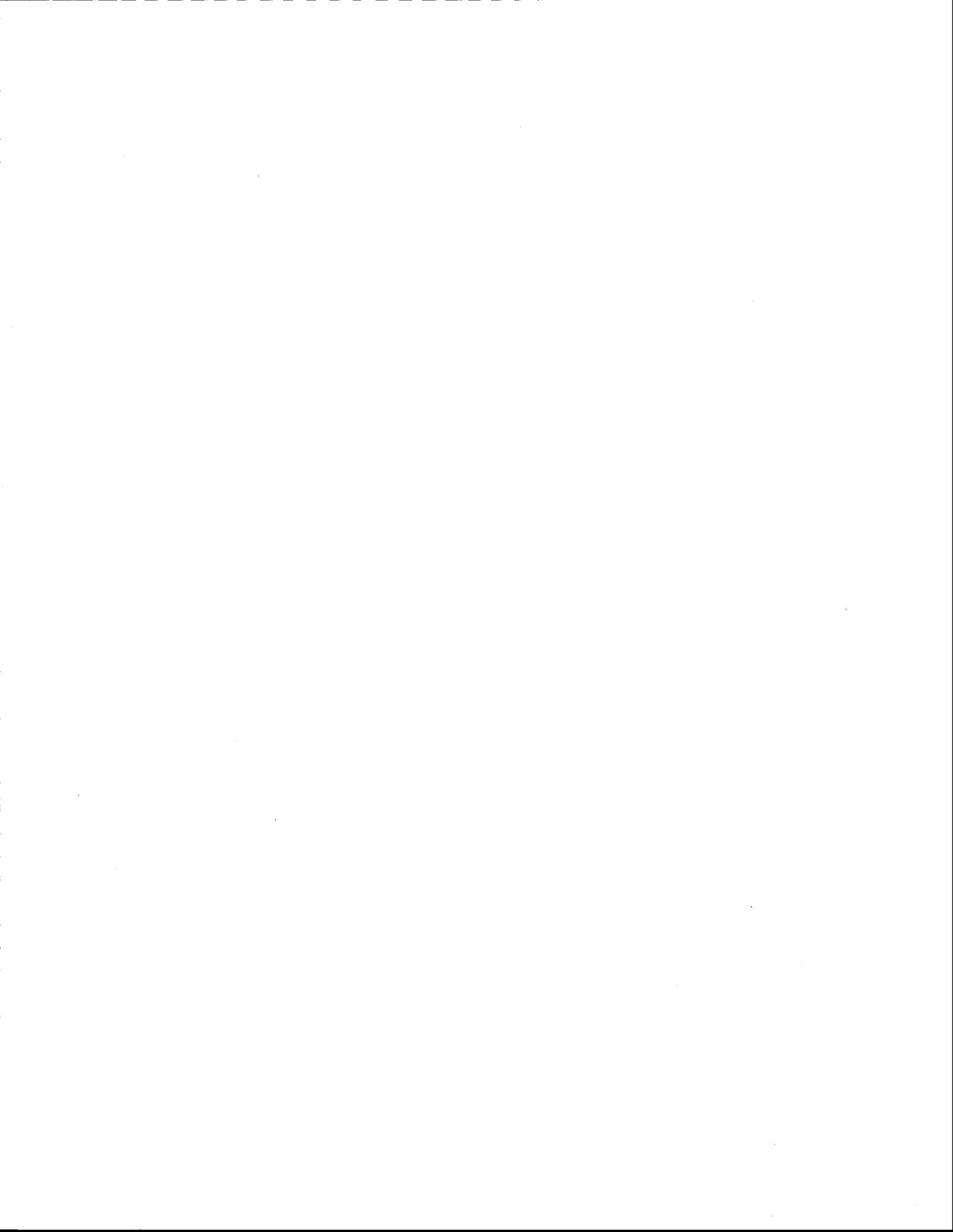
Daniel T. Blue, Jr.
Speaker of the House

Handwritten signature of Marc Basnight.

Marc Basnight
President Pro Tempore

Cochairmen
Legislative Research Commission





1993-1994

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

President Pro Tempore of
the Senate
Marc Basnight, Cochair

Senator Austin Allran
Senator Frank W. Ballance, Jr.
Senator R. L. Martin
Senator J. K. Sherron, Jr.
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Representatives
Daniel T. Blue, Jr., Cochair

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Rep. Bertha M. Holt
Rep. Vernon G. James

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1993 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of Criminal Case Disposition would have been authorized by Part II, Sec. 2.1(10) of the 2nd Edition of House Bill 1319 which passed both chambers but inadvertently was among the bills not ratified at the end of the 1993 Session. Under Part II of the 2nd Edition of House Bill 1319, the language of House Bill 127 or Senate Bill 250 could be used in determining the nature, scope and aspects of the study of Criminal Case Disposition. The relevant portions of the 2nd Edition of House Bill

1319, House Bill 127, and Senate Bill 250 are included in Appendix A. The Legislative Research Commission authorized this study in the Fall of 1993 under authority of G.S. 120-30.17(1) and grouped this study in its Criminal Law area under the direction of Representative Bertha M. Holt. (House Bill 1319, 2nd Edition, was later amended and ratified in 1994 with the Legislative Research Commission studies language deleted because the Legislative Research Commission had already acted on these matters.)

The Legislative Research Commission subsequently reauthorized this Committee as the Committee on Criminal Law, with authority to study all aspects of criminal law, including the matter of criminal case disposition as originally specified in the 2nd Edition of House Bill 1319. Letters from the cochairmen of the Legislative Research Commission specifying the reauthorization of the Committee are included as Appendix B.

The Committee was chaired by Senator R. C. Soles, Jr. and Representative H. M. Michaux, Jr. The full membership of the Committee is listed in Appendix C of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

January 28, 1994

John Rubin, of the Institute of Government, began his presentation by outlining the main features of North Carolina's calendaring system. Mr. Rubin explained that the North Carolina statutes provide the District Attorney with control of the calendar. The District Attorney generally decides which case will be heard, which case will be recalendared, and the order in which the cases will appear. In response to the Committee's interest in alternative methods of criminal case disposition, Mr. Rubin presented some alternatives to a prosecutor-controlled calendar. He noted that one alternative is for calendaring to be controlled by the trial judge or someone under the trial judge's direction. Another alternative is joint control of the calendar by the trial judge and the district attorney. According to Mr. Rubin, all states except North Carolina and Louisiana employ some form of court-controlled calendaring. Mr. Rubin reviewed the pros and cons of both systems. He noted the apparent efficiency of a court-controlled calendar - fewer delays, cost control, ability to make the best use of limited court time, reduction in "judge shopping," and the court's goal to move cases through the system as quickly as possible. On the other hand, North Carolina's judicial rotation system does not allow for a judge to continually be on-site to monitor criminal cases. Additional considerations include the costs associated with a court-controlled system. It is likely that a court-controlled system would require additional personnel to assist the judges with administrative tasks, though a realistic projection of costs has not been made.

Irving Joyner, Associate Dean of the Law School at North Carolina Central University, addressed the issue of fairness and the public perception of the criminal justice process. Dean Joyner proposed the use of trial court administrators in the calendaring of criminal cases. He indicated that the trial court administrator need not be an attorney, but should operate independently. Alternatively, Dean Joyner proposed that the Chief Superior Court Judge or the Chief District Court Judge be responsible for calendaring and that staff be provided to assist them. In either case, Dean Joyner noted that a clear time line should be established for the disposition of cases.

Jim Drennan, Director of the Administrative Office of the Courts, explained that the District Attorney has had the responsibility of calendaring for a long time, and that presumably it was done that way because the district attorney is the only constant in the courtroom. Mr. Drennan agreed that any change in the calendaring system would likely result in the need for additional administrative personnel, which would require additional funding.

Dick Taylor, Executive Director of Legal Services of North Carolina, discussed Simeon v. Stephens, a case which challenges North Carolina's system of calendaring criminal cases. The case arose out of Legal Services' representation of pretrial detainees who could not get their cases heard before the court. Paul Green, one of the lawyers involved in Simeon provided information about the case. Legal Services argues that it is imperative that the courts have the power to control the calendaring of criminal cases, and urges reform of the system. They cite the basic arguments for reform as fairness and efficiency.

September 23, 1994

At the direction of the co-chair, Committee Counsel reviewed an amendment introduced in the 1994 Regular Session which would have made the Senior Resident Superior Court Judge in each judicial district responsible for calendaring criminal matters. Committee Counsel also advised the Committee of the status of relevant appellate cases on the issues of speedy trial and calendaring.

Jim Drennan, Director of the Administrative Office of the Courts, presented information on caseload management in the District Attorney's office. He offered the assistance of his office in implementing whatever changes the Committee and the General Assembly deem necessary.

Thomas Keith, District Attorney from Winston-Salem, told the Committee that calendaring is the linchpin of the entire justice system, and that if it is pulled out, it will take extreme measures to fix it.

Mary Ann Tally, representing the N.C. Academy of Trial Lawyers, indicated that though the trial bar has tried unsuccessfully to negotiate with the District Attorneys, a new proposal is currently being considered.

October 28, 1994

Mary Ann Tally, General Counsel for the N.C. Academy of Trial Lawyers, presented the position of the Academy with regard to the calendaring of criminal cases. She stated that the Academy wants a fair, efficient and constitutionally defensible system of

calendaring cases. They suggest that a number of significant changes need to be made to the system currently in place in North Carolina, and that the court should have the ultimate control over the calendar. The proposal of the Academy of Trial Lawyers is included in this report as Appendix D.

Tye Hunter, Appellate Defender, presented an alternative proposal for the calendaring of criminal cases. The proposal of the Appellate Defender is included in this report as Appendix E. This proposal would involve a status conference before a judge, trial court administrator or other designated official, at which dates would be set for the production of discovery, arraignment, filing of pretrial motions, pretrial conference, trial, and other proceedings as appropriate.

Thomas Keith, representing the Conference of District Attorneys, proposed that the current calendaring system be maintained with some modifications to eliminate or reduce many of the complaints brought before the Committee. The proposal of the District Attorneys is included in this report as Appendix F.

Upon motion of Representative Sutton, a subcommittee was appointed to consider alternatives to the current calendaring system and report back to the Committee. Representative Sutton was appointed to chair the subcommittee. Committee members Bob Brown, Belinda Foster, Judge Ernest Fullwood, and Ralph Knott were also appointed to the subcommittee.

November 23, 1994

Representative Ronnie Sutton presented the report of the subcommittee, which met on November 18, 1994. The subcommittee determined that additional information was necessary before any recommendations could be proposed, and indicated that requests had been made to the Administrative Office of the Courts and to the Fiscal Research Division of the General Assembly regarding costs and personnel needs. The Committee discussed various issues related to additional costs and increased staffing needs, and determined that it would delay action to allow the subcommittee to collect additional information and report back to the Committee at its next meeting.

December 16, 1994

Representative Ronnie Sutton presented the final report of the subcommittee, which met on December 9, 1994. The subcommittee transmitted a report received from the Administrative Office of the Courts which contained the results of a survey of District Attorneys on the kinds of activities associated with calendaring, who does those activities and how much of their time is devoted to those activities, and the impact that District Attorneys would anticipate within their offices if those activities were to be handled elsewhere. The report also contained information on position costs for the positions that currently handle calendaring, and caseload statistics on filings and dispositions. That report is contained in the official records of the Committee. It is not reproduced in this report because of its size. The subcommittee presented a list of proposed recommendations, along with proposed legislation which would transfer the calendaring authority for criminal cases in superior court to the Resident Superior Court

Judge. The committee discussed the proposed recommendations and legislation and directed Committee Counsel to make specified changes and prepare a draft for the final report to the Legislative Research Commission.

January 4, 1995

The Committee held its final meeting to adopt this report to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

After reviewing all of the testimony and proposals presented to it, the Committee finds that the method of calendaring criminal cases in the Superior Court should be changed. In order to implement this recommendation, the Committee recommends that the General Assembly adopt the bill immediately following this page, entitled, AN ACT TO TRANSFER THE CALENDARING AUTHORITY FOR CRIMINAL CASES IN SUPERIOR COURT TO THE SENIOR RESIDENT SUPERIOR COURT JUDGE.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

D

95-LH-016A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Transfer Criminal Calendar.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO TRANSFER THE CALENDARING AUTHORITY FOR CRIMINAL
3 CASES IN SUPERIOR COURT TO THE SENIOR RESIDENT SUPERIOR COURT
4 JUDGE.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 7A-49.3 reads as rewritten:
7 "§ 7A-49.3. Calendar for criminal trial sessions.
8 ~~(a) At least one week before the beginning of any session of the superior court for~~
9 ~~the trial of criminal cases, the district attorney shall file with the clerk of superior court~~
10 ~~a calendar of the cases he intends to call for trial at that session. The calendar shall fix~~
11 ~~a day for the trial of each case listed thereon. The district attorney may place on the~~
12 ~~calendar for the first day of the session all cases which will require consideration by the~~
13 ~~grand jury without obligation to call such cases for trial on that day. No case on the~~
14 ~~calendar may be called for trial before the day fixed by the calendar except by consent~~
15 ~~or by order of the court. Any case docketed after the calendar has been filed with the~~
16 ~~clerk may be placed on the calendar at the discretion of the district attorney.~~
17 ~~(a1) If he has not done so before the beginning of each session of superior court at~~
18 ~~which criminal cases are to be heard, the District Attorney, after calling the calendar~~
19 ~~and disposing of nonjury matters, including guilty pleas, if any such nonjury matters~~
20 ~~are to be disposed of prior to the calling of cases for trial, shall announce to the court~~
21 ~~the order in which he intends to call for trial the cases remaining on the calendar.~~
22 ~~Deviations from the announced order require approval by the presiding judge, if the~~
23 ~~defendant whose case is called for trial objects; but the defendant may not object if all~~

~~1 the cases scheduled to be heard before his case have been disposed of or delayed with
2 the approval of the presiding judge or by consent.~~

3 (a2) For purposes of this section, 'to calendar or calendaring' means to select the
4 criminal cases to be tried or otherwise brought before the court for a particular session
5 of court and to publish those cases in a particular order on a trial calendar for that
6 session.

7 The authority to calendar criminal cases in superior court is vested in the senior
8 resident superior court judge as defined in G.S. 7A-41.1. The senior resident superior
9 court judge is responsible for the calendaring of all superior court criminal cases,
10 motions, or other proceedings for trial or hearing. The senior resident superior court
11 judge retains the authority to amend the court calendar prepared under his or her
12 direction until court convenes for the calendared session of court.

13 Cases on the criminal court calendar shall be called in the order they appear on the
14 calendar; provided, however, that nothing in this section shall be construed to affect the
15 authority of the court in the call of cases. Any motion to amend the court calendar
16 once a session of court is convened shall be heard by the presiding superior court
17 judge.

18 The responsibilities for the calendaring of criminal cases in superior court may be
19 delegated by the senior resident superior court judge to a trial court administrator or
20 other person designated by the judge as deemed appropriate by the judge. However,
21 the responsibilities for the calendaring of criminal cases in superior court may not be
22 delegated to the district attorney, to an assistant district attorney, or to any member of
23 the district attorney's staff. Calendars shall be published in sufficient time for all
24 parties to a case to have adequate notice.

25 If the district attorney or the defense attorney disagrees with a calendaring decision
26 made by a trial court administrator or other person designated by the senior resident
27 superior court judge to be responsible for the calendaring process regarding a criminal
28 case then the district attorney or the defense attorney may request the senior resident
29 superior court judge to review the calendaring decision and to revise the calendar as
30 appropriate.

31 The criteria used to determine which cases are to be placed on the calendar for a
32 particular session of criminal court and the order in which those cases are to be called
33 shall ensure that the district attorney and the defense attorney responsible for the case
34 have equal access to the calendaring process. The criteria used to determine which
35 cases are to be placed on the calendar for a particular session of criminal court and the
36 order in which those cases are to be called shall also ensure that the interests of the
37 State and the defendant are treated equitably and justly with regard to the calendaring
38 process.

39 (b) All witnesses shall be subpoenaed to appear on the date listed for the trial of the
40 case in which they are witnesses. Witnesses shall not be entitled to prove their
41 attendance for any day or days prior to the day on which the case in which they are
42 witnesses is set for trial, unless otherwise ordered by the presiding judge.

43 (c) Nothing in this section shall be construed to affect the authority of the court in
44 the call of cases for trial."

1 Sec. 2. G.S. 6-53 reads as rewritten:

2 "**§ 6-53. Witness to prove attendance; action for fees.**

3 (a) Every person summoned, who shall attend as a witness in any suit, shall, before
4 the clerk of the court, or before the referee or officer taking the testimony, ascertain by
5 his own oath or affirmation the sum due for traveling to and from court, attendance and
6 ferriage, which shall be certified by the clerk; and on failure of the party, at whose
7 instance such witness was summoned (witnesses for the State and municipal
8 corporations excepted), to pay the same previous to the departure of the witness from
9 court, such witness may at any time sue for and recover the same from the party
10 summoning him; and the certificate of the clerk shall be sufficient evidence of the debt.

11 (b) All witnesses shall be subpoenaed to appear on the date listed for the trial of the
12 case in which they are witnesses. Witnesses shall not be entitled to prove their
13 attendance for any day or days prior to the day on which the case in which they are
14 witnesses is set for trial, unless otherwise ordered by the presiding judge."

15 Sec. 3. G.S. 7A-61 reads as rewritten:

16 "**§ 7A-61. Duties of district attorney.**

17 Subject to the provisions of G.S. 7A-49.3, the ~~The~~ district attorney or the district
18 attorney's designee shall prepare the trial dockets, dockets in district court. The
19 district attorney shall prosecute in the name of the State all criminal actions and
20 infractions requiring prosecution in the superior and district courts of his prosecutorial
21 district, advise the officers of justice in his district, and perform such duties related to
22 appeals to the Appellate Division from his district as the Attorney General may require.
23 Effective January 1, 1971, the district attorney shall also represent the State in juvenile
24 cases in which the juvenile is represented by an attorney. Each district attorney shall
25 devote his full time to the duties of his office and shall not engage in the private
26 practice of law."

27 Sec. 4. G.S. 15A-943 reads as rewritten:

28 "**§ 15A-943. Arraignment in superior court --Required calendaring.**

29 (a) In counties in which there are regularly scheduled 20 or more weeks of trial
30 sessions of superior court at which criminal cases are heard, and in other counties the
31 Chief Justice designates, ~~the prosecutor must calendar~~ arraignments must be calendared
32 in the superior court on at least the first day of every other week in which criminal
33 cases are heard. No cases in which the presence of a jury is required may be calendared
34 for the day or portion of a day during which arraignments are calendared.

35 (b) When a defendant pleads not guilty at an arraignment required by subsection (a),
36 he may not be tried without his consent in the week in which he is arraigned.

37 (c) Notwithstanding the provisions of subsection (a) of this section, in any county
38 where as many as three simultaneous sessions of superior court, whether criminal, civil,
39 or mixed, are regularly scheduled, ~~the prosecutor may calendar~~ arraignments may be
40 calendared in any of the criminal or mixed sessions, at least every other week, upon
41 any day or days of a session, and jury cases may be calendared for trial in any other
42 court at which criminal cases may be heard, upon such days."

43 Sec. 5. The North Carolina Supreme Court is requested, pursuant to its
44 rulemaking authority, to adopt rules to implement the procedures set out in this act.

1 The rules shall include the criteria to be used to determine when a case is ready to be
2 tried. The Administrative Office of the Courts shall work with the North Carolina
3 Supreme Court in implementing the procedures set out in this act and shall report to
4 the General Assembly by January 1, 1996, on any statutory changes needed to
5 implement and conform with the procedures set out in this act and on the additional
6 personnel and funding that is needed to implement those procedures.

7 Sec. 6. The General Assembly is encouraged to make every feasible effort
8 to provide the funding requested by the North Carolina Supreme Court and the
9 Administrative Office of the Courts to implement the procedures set out in this act. No
10 positions existing in the district attorneys offices shall be eliminated for the purpose of
11 implementing the procedures set out in this act.

12 Sec. 7. The Administrative Office of the Courts shall determine the
13 qualifications of the court personnel, other than the judges, district attorneys, and
14 assistant district attorneys needed to implement the procedures set out by this act.

15 Sec. 8. Sections one, two, three, and four of this act become effective July
16 1, 1996; the remainder of this act is effective upon ratification.

**EXPLANATION OF THE LEGISLATIVE PROPOSAL A BILL TO BE ENTITLED
AN ACT TO TRANSFER THE CALENDARING AUTHORITY FOR CRIMINAL
CASES IN SUPERIOR COURT TO THE SENIOR RESIDENT SUPERIOR COURT
JUDGE.**

The legislative proposal transfers from the district attorneys' offices to the Senior Resident Superior Court Judge the authority and responsibility for calendaring criminal matters to be heard in Superior Court. The transfer becomes effective July 1, 1996. The bill defines the action of calendaring as the selection of criminal cases to be tried or otherwise brought before the court for a particular session of court and the publication of those cases in a particular order on a trial calendar for that session.

The Senior Resident Superior Court Judge may delegate the responsibilities for the calendaring of criminal cases to a trial court administrator or other person deemed appropriate by the judge, but may not delegate the calendaring responsibilities to the district attorney, an assistant district attorney, or any member of the district attorney's staff. The Senior Resident Superior Court Judge retains the authority to amend the calendar for a particular session of court until court convenes for that session. Once court is convened, any motion to amend the calendar must be heard by the presiding Superior Court judge. The legislative proposal provides that cases on the criminal court calendar are to be called in the order in which they are listed, but also clarifies that the court retains its discretionary authority with regard to the call of cases.

If there is a disagreement between the defense attorney and the prosecuting attorney with regard to a calendaring decision made by a trial court administrator or other designated person, the defense attorney or the prosecuting attorney may request the Senior Resident Superior Court Judge to review the calendaring decision and revise the calendar as appropriate.

The legislative proposal requires that the criteria used to determine which cases are to be placed on the calendar and the order in which those cases are to be called ensure

that the defense attorney and the prosecuting attorney have equal access to the calendaring process and ensure that the interests of the State and the defense are treated equitably and justly.

The legislative proposal also makes a number of conforming statutory changes.

Section 5 of the legislative proposal requests that the North Carolina Supreme Court adopt rules to implement the procedures set out in the legislative proposal and instructs the Administrative Office of the Courts to work with the North Carolina Supreme Court to implement those procedures. The Administrative Office of the Courts is required to report to the General Assembly by January 1, 1996, on any further statutory changes needed to implement the procedures set out in the legislative proposal and on the additional personnel and funding that is needed to implement those procedures.

Section 6 appropriates no funds for the implementation of the legislative proposal, but encourages the General Assembly to fund the requests of the North Carolina Supreme Court and the Administrative Office of the Courts as feasible and also provides that no positions in the offices of the district attorneys are to be eliminated for the purpose of implementing the new calendaring procedures.

Section 7 of the legislative proposal charges the Administrative Office of the Courts with the duty of determining the qualifications of the personnel needed to implement the new calendaring procedures (other than judges).

Section 8 of the legislative proposal sets out the effective dates.

APPENDIX A

HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1993".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- (10) Criminal Case Disposition (H.B. 127 - Michaux, S.B. 250 - Soles).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1993

S

1

SENATE BILL 250*

Short Title: Criminal Case Disposition Study.

(Public)

Sponsors: Senator Soles.

Referred to: Rules and Operation of the Senate.

February 19, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE CRIMINAL CASE DISPOSITION STUDY
3 COMMISSION.

4 Whereas, there has been a steady increase in the number and complexity
5 of criminal cases in North Carolina; and

6 Whereas, the increase has resulted in delays and docket backlogs that
7 have delayed the disposition of criminal cases; and

8 Whereas, disparities have arisen between judicial districts in the amount
9 of time required to dispose of criminal cases; and

10 Whereas, it is projected that the number of criminal cases filed in North
11 Carolina will continue to increase; and

12 Whereas, the State's current system of criminal case management is
13 overloaded and may need additional resources; and

14 Whereas, there should be careful consideration and detailed study to
15 determine the best use of the State's resources with regard to criminal case
16 management and whether improvements can be made to the system to ensure the
17 equitable and efficient disposition of criminal cases; Now, therefore,

18 The General Assembly of North Carolina enacts:

19 Section 1. The Criminal Case Disposition Study Commission is created.
20 The Commission shall study the following issues:

21 (1) Possible improvements in the calendaring and efficient disposing of
22 criminal cases, with the goal of obtaining the swift and equitable
23 disposition of criminal charges in conformity with the dictates of
24 law and the need for accurate preparation.

- 1 (2) The existence of and reasons for significant backlogs on the
2 criminal docket of the State.
- 3 (3) Proposals to address inefficiencies in the disposition of criminal
4 cases, both short and long term, which would provide for a
5 uniform and consistent system for the disposition of criminal cases
6 in all judicial districts of the State.
- 7 (4) Any other related issues.
- 8 Sec. 2. The Commission shall consist of 26 members to be appointed as

9 follows:

- 10 (1) The President Pro Tempore of the Senate shall appoint 12
11 members, one of whom shall be designated as cochair. Of those 12
12 members, five shall be members of the Senate, one shall be a
13 superior court judge, one shall be a district court judge, one shall
14 be a clerk of court, two shall be district attorneys, and two shall be
15 members of the criminal defense bar.
- 16 (2) The Speaker of the House of Representatives shall appoint 12
17 members, one of whom shall be designated cochair. Of those 12
18 members, nine shall be members of the House of Representatives,
19 one shall be a superior court judge, one shall be a clerk of court,
20 and one shall be a public defender.
- 21 (3) The Chief Justice of the Supreme Court of North Carolina or his
22 designee, and the Director of the Administrative Office of the
23 Courts.

24 Members appointed to the Commission shall serve until the Commission
25 makes its final report. Vacancies on the Commission shall be filled in the same
26 manner as the original appointments were made.

27 Sec. 3. The Commission shall meet upon the call of the cochairs.

28 Sec. 4. Upon request of the Commission or its staff, all State departments
29 and agencies shall furnish to the Commission or its staff any information in their
30 possession or available to them.

31 Sec. 5. The Commission may submit an interim report of its findings and
32 recommendations on or before the first day of the 1994 Regular Session of the 1993
33 General Assembly. The Commission shall submit the final report of its findings and
34 recommendations to the General Assembly on or before January 15, 1995. All
35 reports shall be submitted by filing the report with the Speaker of the House of
36 Representatives and the President Pro Tempore of the Senate. The Commission shall
37 terminate upon filing its final report.

38 Sec. 6. The Commission may contract for clerical or professional staff or
39 for any other services it may require in the course of its ongoing study as provided in
40 G.S. 120-32.02. At the request of the Commission, the Legislative Services
41 Commission may supply members of the staff of the Legislative Services Office and
42 clerical assistance to the Commission as the Legislative Services Commission deems
43 appropriate. The Commission may, with the approval of the Legislative Services
44 Commission, meet in the State Legislative Building or the Legislative Office Building.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 127

Short Title: Criminal Case Disposition Study.

(Public)

Sponsors: Representatives Michaux; Redwine and Stamey.

Referred to: Rules, Calendar and Operation of the House.

February 11, 1993

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH THE CRIMINAL CASE DISPOSITION STUDY
3 COMMISSION.

4 Whereas, there has been a steady increase in the number and complexity
5 of criminal cases in North Carolina; and

6 Whereas, the increase has resulted in delays and docket backlogs that
7 have delayed the disposition of criminal cases; and

8 Whereas, disparities have arisen between judicial districts in the amount
9 of time required to dispose of criminal cases; and

10 Whereas, it is projected that the number of criminal cases filed in North
11 Carolina will continue to increase; and

12 Whereas, the State's current system of criminal case management is
13 overloaded and may need additional resources; and

14 Whereas, there should be careful consideration and detailed study to
15 determine the best use of the State's resources with regard to criminal case
16 management and whether improvements can be made to the system to ensure the
17 equitable and efficient disposition of criminal cases; Now, therefore,

18 The General Assembly of North Carolina enacts:

19 Section 1. The Criminal Case Disposition Study Commission is created.
20 The Commission shall study the following issues:

- 21 (1) Possible improvements in the calendaring and efficient disposing of
22 criminal cases, with the goal of obtaining the swift and equitable
23 disposition of criminal charges in conformity with the dictates of
24 law and the need for accurate preparation.

- 1 (2) The existence of and reasons for significant backlogs on the
2 criminal docket of the State.
- 3 (3) Proposals to address inefficiencies in the disposition of criminal
4 cases, both short and long term, which would provide for a
5 uniform and consistent system for the disposition of criminal cases
6 in all judicial districts of the State.
- 7 (4) Any other related issues.

8 Sec. 2. The Commission shall consist of 26 members to be appointed as
9 follows:

- 10 (1) The President Pro Tempore of the Senate shall appoint 12
11 members, one of whom shall be designated as cochair. Of those 12
12 members, five shall be members of the Senate, one shall be a
13 superior court judge, one shall be a district court judge, one shall
14 be a clerk of court, two shall be district attorneys, and two shall be
15 members of the criminal defense bar.
- 16 (2) The Speaker of the House of Representatives shall appoint 12
17 members, one of whom shall be designated cochair. Of those 12
18 members, nine shall be members of the House of Representatives,
19 one shall be a superior court judge, one shall be a clerk of court,
20 and one shall be a public defender.
- 21 (3) The Chief Justice of the Supreme Court of North Carolina or his
22 designee, and the Director of the Administrative Office of the
23 Courts.

24 Members appointed to the Commission shall serve until the Commission
25 makes its final report. Vacancies on the Commission shall be filled in the same
26 manner as the original appointments were made.

27 Sec. 3. The Commission shall meet upon the call of the cochairs.

28 Sec. 4. Upon request of the Commission or its staff, all State departments
29 and agencies shall furnish to the Commission or its staff any information in their
30 possession or available to them.

31 Sec. 5. The Commission may submit an interim report of its findings and
32 recommendations on or before the first day of the 1994 Regular Session of the 1993
33 General Assembly. The Commission shall submit the final report of its findings and
34 recommendations to the General Assembly on or before January 15, 1995. All
35 reports shall be submitted by filing the report with the Speaker of the House of
36 Representatives and the President Pro Tempore of the Senate. The Commission shall
37 terminate upon filing its final report.

38 Sec. 6. The Commission may contract for clerical or professional staff or
39 for any other services it may require in the course of its ongoing study as provided in
40 G.S. 120-32.02. At the request of the Commission, the Legislative Services
41 Commission may supply members of the staff of the Legislative Services Office and
42 clerical assistance to the Commission as the Legislative Services Commission deems
43 appropriate. The Commission may, with the approval of the Legislative Services
44 Commission, meet in the State Legislative Building or the Legislative Office Building.

1 Sec. 7. Members of the Commission shall be paid per diem, subsistence,
2 and travel allowances as follows:

3 (1) Commission members who are also members of the General
4 Assembly, at the rate established in G.S. 120-3.1.

5 (2) Commission members who are officials or employees of the State
6 or local government agencies, at the rate established in G.S. 138-6.

7 (3) All other Commission members, at the rate established in G.S.
8 138-5.

9 Sec. 8. There is appropriated from the General Fund to the General
10 Assembly the sum of twenty thousand dollars (\$20,000) for the 1993-94 fiscal year
11 and the sum of twenty thousand dollars (\$20,000) for the 1994-95 fiscal year for the
12 work of the Criminal Case Disposition Study Commission.

13 Sec. 9. This act becomes effective July 1, 1993.

APPENDIX B



CORRECTED COPY

NORTH CAROLINA GENERAL ASSEMBLY

PRESIDENT PRO TEMPORE

SENATOR MARC BASNIGHT

RALEIGH 27601-2808

1ST DISTRICT

STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27601-2808
PH: (919) 733-6854
FAX (919) 733-8740

November 15, 1993

The Honorable R.C. Soles
State Senator
P.O. Box 6
Tabor City, North Carolina 28463

Dear R.C.:

Pursuant to the authority contained in G. S. 120-30.17 (1), the Legislative Research Commission has created and authorized its Committee on Criminal Law to study all aspects of criminal law, including its enforcement, and specifically, the matter of criminal case disposition contained in Section 1 of the passed but not ratified Study Bill, Committee Substitute to House Bill 1319. I am pleased to appoint you CoChair of this Committee.

Your committee may consider the original bill to determine the nature, scope and other aspects of the study. This Committee is one of four in the Civil and Criminal Law Grouping over which Representative Bertha M. Holt is responsible as a member of the Legislative Research Commission. For your information, I am enclosing a copy of the 1993-94 LRC rules.

I appreciate your willingness to serve in this capacity. Your service will be a credit to the General Assembly and the State of North Carolina.

Sincerely,

A handwritten signature in cursive script that reads "Marc".

Marc Basnight
President Pro Tempore

The Honorable R.C. Soles
November 15, 1993
Page 2

c: The Honorable James B. Hunt, Jr.
The Honorable Dennis A. Wicker
The Honorable Daniel T. Blue, Jr.
The Honorable Rufus L. Edmisten
The Honorable Bertha M. Holt, LRC Member
Ms. Denise Weeks, House Principal Clerk
Mrs. Sylvia Fink, Senate Principal Clerk
Mr. George R. Hall, Jr., Legislative Admin. Officer
Mr. Terrence Sullivan, Director of Research
Office of State Controller
State Disbursing Office
Legislative Library
State Library



Office of the Speaker
North Carolina House of Representatives
Raleigh, N. C. 27601-1096

DANIEL T. BLUE, JR.
SPEAKER

LEGISLATIVE BUILDING
PHONE: (919) 733-3451

December 1, 1993

The Honorable Henry M. Michaux, Jr.
P. O. Box 2152
Durham, North Carolina 27702

Dear Mickey:

Pursuant to the authority contained in G. S. 120-30.17 (1), the Legislative Research Commission has authorized for study the Criminal Law Committee as contained in the unratified Studies Bill of 1993. I am pleased to appoint you to serve as Co-Chair of this Committee.

Representative Bertha Holt will serve as the LRC Member assigned to coordinate this committee and will contact the Co-Chairs about scheduling the first meeting.

I appreciate your willingness to serve on this committee, and I am sure that your service will be a credit to the people of North Carolina.

Sincerely,

Daniel T. Blue, Jr.

cc: Governor James B. Hunt, Jr.
Lieutenant Governor Dennis A. Wicker
Secretary of State Rufus Edmisten
Senate President Pro Tempore Marc Basnight
Denise Weeks, House Principal Clerk
Sylvia Fink, Senate Principal Clerk
George R. Hall, Jr., Legislative Administrative Officer
Terrence Sullivan, Director, Research Division
Tom Covington, Director, Fiscal Research
Gerry Cohen, Director, Bill Drafting Division
Legislative Library
State Library
Office of the State Controller



APPENDIX C

CRIMINAL LAW COMMITTEE MEMBERSHIP 1993 - 1994

LRC MEMBER: Rep. Bertha M. Holt
P.O. Box 1111
Burlington, NC 27216
(919)227-7333

President Pro Tempore Appointments

Sen. R.C. Soles, Cochair
P.O. Box 6
Tabor City, NC 28463
(910)653-2015

Sen. Frank Ballance, Jr.
P.O. Box 616
Warrenton, NC 27589
(919)257-1012

Sen. Jerry Blackmon
P.O. Box 33664
Charlotte, NC 28233
(704)332-6164

Hon. Coy Brewer
Superior Court Judge
P.O. Box 363
Fayetteville, NC 28303

Sen. Linda Gunter
1101 Highland Trail
Cary, NC 27511
(919)469-5185

Sen. Luther Jordan
P.O. Box 701
Wilmington, NC 28402
(910)763-2441

Sen. Sandy Sands
P.O. Box 449
Reidsville, NC 27323-0449
(910)349-7041

Speaker's Appointments

Rep. Henry M. Michaux, Jr., Cochair
P.O. Box 2152
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(919)596-8181

Rep. David G. Balmer
P.O. Box 12391
Charlotte, NC 28220
(704)543-1990

Mr. Robert Brown, Jr.
Durham County Judicial Building
Suite 500
Durham, NC 27701

Rep. David T. Flaherty, Jr.
P.O. Drawer 1586
Lenoir, NC 28615
(704)754-0961

Ms. Belinda J. Foster
District Attorney
District 17-A
P.O. Box 35
Wentworth, NC 27375-0035

Hon. Ernest Fullwood
Superior Court Judge
115 Cavalier Drive
Wilmington, NC 28401

Hon. Ralph S. Knott
Clerk of Court
102 S. Main Street
Louisburg, NC 27549

Mr. Jerry Tillett
Route 1, Box 1659
Manteo, NC 27954

Mr. H.P. Williams, Jr.
202 East Colonial Avenue
Elizabeth City, NC 27909

Staff:

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Ms. Brenda Carter
Ms. Lynn Marshbanks
Research Division
(919)733-2578

Ms. Emily Johnson
Bill Drafting Division
(919)733-6660

Rep. Paul R. McCrary
310 Westover Drive
Lexington, NC 27292
(704)249-9285

Rep. E. David Redwine
P.O. Box 283
Shallotte, NC 28459
(910)754-4326

Rep. Ronnie N. Sutton
Rt 1, Box 154
Pembroke, NC 28372
(910)843-2353

Clerk:

Ms. Debbie Yarborough
607 Legislative Office Building
O: (919)733-5755
H: (919)779-6525



THE NORTH CAROLINA ACADEMY OF TRIAL LAWYERS

LAWYERS HELPING PEOPLE

POST OFFICE BOX 767 • RALEIGH, NC 27602-0767 • 919/832-1413 • 800/688-1413 • 919/832-6361 FAX

EXECUTIVE DIRECTOR
Marjorie Putnam

October 17, 1994

Mr. Steve Rose, Counsel
LRC Criminal Law Study Committee
545 Legislative Office Bldg.
Raleigh, N.C. 27601-1096

Re: Proposals of North Carolina Academy of Trial Lawyers for calendaring of Criminal Superior Court matters

Dear Mr. Rose:

Thank you for the opportunity to submit the following proposals to the Committee for its consideration at the October 28, 1994 meeting. Our proposals have developed from several years of work on this issue by the Academy Criminal Law Section, which is composed of approximately 500 lawyers across the state who routinely defend citizens accused of criminal offenses in the state and federal courts. We have surveyed our membership to determine the nature and extent of the problems and abuses associated with District Attorney calendar control. We are convinced that these proposals would begin to address many of the problems identified across the state, as well as constitutional deficits in the current system and practice.

Our proposals for statutory language follow. Below each recommendation is a brief rationale for each. Since the Committee has, over the last two years, heard extensive presentations and has voluminous written materials, I will not write extensively. However, I would welcome the opportunity to address the Committee concerning the proposals should the Co-Chairs deem it appropriate.

NCGS 7A-49.3(c)

(c) A defendant shall be required to appear upon the initial calling of a trial calendar during a session of court. After the call of the calendar, the court shall place a defendant on standby unless good cause exists for the defendant's continued presence in court. Upon being placed on standby, the defendant need not thereafter be present in the courtroom until his or her case is called for trial, plea, or motion hearing. The defendant shall be given a reasonable period of time to appear once the case is called for trial, plea, or motion hearing.

THIS PROVISION PROVIDES FOR THE NECESSARY APPEARANCES OF DEFENDANTS WITHOUT REQUIRING LENGTHY AND UNNECESSARY ATTENDANCE, WHICH OFTEN RESULTS IN THE LOSS OF EMPLOYMENT.

NCGS 7A-49.3(d)

(d) After indictment in Superior Court or the filing of notice of appeal from a misdemeanor conviction in District Court, the parties may agree on a date for the trial of the case and so notify the Court. If such an agreement is reached, the case shall be set for trial on that date.

If the parties are unable to agree on a trial date by the time of arraignment, the Court must hold a hearing at the time of arraignment for the purpose of establishing a date for the trial of the case.

The Court shall have jurisdiction to modify a trial date upon motion of either party and for good cause shown.

THIS PROVISION GIVES THE PARTIES A REASONABLE BUT LIMITED TIME FRAME IN WHICH TO AGREE UPON A TRIAL DATE, BASED ON THE COMPLEXITIES OF THE PARTICULAR CASE, AVAILABILITY OF WITNESSES, THE RESPECTIVE SCHEDULES OF THE LAWYERS IN THE CASE, AND OTHER MATTERS ALREADY SCHEDULED FOR TRIAL. IN THE EVENT THAT NO AGREEMENT CAN BE REACHED BY THE TIME OF ARRAIGNMENT, THE COURT WILL BE REQUIRED TO HOLD A HEARING TO SET A TRIAL DATE, AT WHICH HEARING THE COURT WILL GIVE BOTH PARTIES AN OPPORTUNITY TO BE HEARD. THE PROVISION ALSO MAKES CLEAR THAT THE COURT HAS ULTIMATE POWER AND JURISDICTION TO SET AND MODIFY THE TRIAL CALENDAR.

NCGS 15A-931(c)

(c) The prosecutor, after taking a dismissal, shall notify a defendant and his counsel of such action by the end of the next business day following such dismissal. The clerk of court shall immediately notify the official in charge of the custody of any defendant known to be confined in any state or local facility of the filing of a dismissal of charges for which a defendant is being held.

THIS PROVISION ENSURES THAT DEFENDANTS WILL NOT BE HELD IN CUSTODY IN VIOLATION OF THEIR CIVIL RIGHTS IF THE CHARGES FOR WHICH THEY ARE CONFINED ARE NO LONGER PENDING. THIS HAS RECENTLY SURFACED AS A SERIOUS PROBLEM IN DURHAM, WITH THE PROSECUTOR HAVING THE POWER TO DISMISS CASES WITHOUT BEING REQUIRED TO PROVIDE SPECIFIC NOTICE TO ANYONE. THE STATE BAR ETHICS COMMITTEE

HAS A PENDING INQUIRY ON THIS ISSUE. A STATUTORY CHANGE WILL CLARIFY THE RESPONSIBILITIES OF THE PROSECUTOR AND THE CLERK.

NCGS 15A-952(f)

(f) A motion by either party shall be scheduled at a time agreed upon by the parties. If the parties cannot agree, the motion shall be heard at the next regularly scheduled session of criminal or mixed term of court occurring after ten business days following the filing of the motion. A motion to set or modify conditions of pre-trial release shall be heard at the next regular session of criminal or mixed court, unless the parties agree to a hearing date sooner or later than that time.

This section shall not prejudice either party's right to file motions after the hearing, so long as the filing complies with other sections of the General Statutes.

THIS PROVISION PROVIDES FOR THE ORDERLY AND EFFICIENT SCHEDULING OF MOTIONS WHICH ARE FILED AND MUST BE HEARD BEFORE THE TRIAL CAN PROCEED. IT ADDRESSES A SIGNIFICANT PROBLEM ACROSS THE STATE: THE INABILITY TO GET MOTIONS HEARD IN A TIMELY MANNER SO AS TO ENABLE THE PARTIES TO BE ADEQUATELY PREPARED FOR THE TRIAL OR HEARINGS ON OTHER MOTIONS. IT ALSO ENSURES THE BETTER AND MORE COST-EFFECTIVE USE OF CITIZEN JURIES DURING THE TRIAL IN THAT THE COURT WILL HEAR MOTIONS AND RULE ON LEGAL ISSUES PRE-TRIAL, RATHER THAN INTERRUPTING THE TRIAL FOR THIS PURPOSE WITH THE JURY HAVING TO SIT OUTSIDE THE COURTROOM.

I hope that the Committee will give serious and thoughtful consideration to these proposals. I will be glad to provide any further information or answer any questions which may arise.

Most sincerely,



Mary Ann Tally,
General Counsel

**AN ACT TO PLACE CONTROL OF THE
CRIMINAL TRIAL CALENDAR IN THE COURT**

Section 1. G.S. 7A-49.3 reads as rewritten:

(a) **Control of calendar.** In all criminal matters in superior court, control of the criminal calendar shall be vested in the superior court. The senior resident superior court judge in each judicial district shall be responsible for the scheduling of cases for trial and other hearings as provided in this section. The senior resident superior court judge may delegate the calendaring responsibilities set forth in this section to an assignment judge, trial court administrator, or other official acting under the supervision of the senior resident superior court judge; however, calendaring responsibilities shall not be delegated in any way to the prosecutor or to counsel for the defense.

At least once every three months, the Administrative Office of the Courts shall provide to each senior resident superior court judge a roster of criminal cases then pending in the superior court of his or her judicial district. The roster shall recite the charges in each case, the age of the case, the date of indictment, the attorneys for the parties, and such other information as may be pertinent to the management of the calendar. The senior resident superior court judge shall place a copy of the roster on file with the clerk of court and shall provide a copy of the roster to each superior court judge holding a criminal or mixed session of court in that district.

(b) **Status conference.** A status conference shall be held in every criminal case within the jurisdiction of the superior court in accordance with the provisions below:

(i) A status conference shall be held at the next available session of criminal or mixed court occurring after the superior court obtains jurisdiction of the case. The official responsible for calendaring cases may schedule a case for arraignment without holding a status conference beforehand with the consent of both parties. In cases scheduled for arraignment without the holding of a status conference, the court shall at arraignment conduct the status conference or schedule a separate status conference.

(ii) The official responsible for calendaring cases shall give notice of the scheduling of the status conference to the prosecutor and counsel for the defendant (or to the defendant if he or she is not represented by counsel) at least fourteen (14) days before the date of the conference.

(iii) The status conference may be held before an assignment judge, trial court administrator, or other official responsible for the calendaring of cases. If the status conference is held before an official other than a superior court judge, a party dissatisfied with any dates set at the status conference has the right to request a status conference before a superior court judge for the purpose of scheduling the matters described in this section.

(iv) The official presiding at the status conference shall set dates for the production of discovery, arraignment, filing of pretrial motions, pretrial conference, trial, and other proceedings, as appropriate. The presiding official shall also set a date for a further status conference, if warranted. In scheduling trials and other matters, the official presiding at the status conference shall schedule only so many matters for a particular session of court as may be reasonably reached during that session. The matters scheduled at the status conference shall be included in the session calendar in accordance with subsection (c).

(v) No case may be set for trial less than thirty (30) days after the holding of the status conference without the consent of both parties.

(vi) Attendance at the status conference by the prosecution and defense is mandatory. The official presiding at the status conference shall consult with the representatives present in scheduling any matters. If a party fails to send a representative or obtain a continuance of the status conference, the presiding official may schedule matters without consulting with that party. The court may also impose sanctions for an unexcused failure to attend the status conference.

(vii) At any stage of a criminal case within the jurisdiction of the superior court, the prosecution or defense may request that a status conference be held. If the prosecution and defense have reached a plea agreement, either may request that the case be calendared for entry of the plea without the holding of an additional status conference. Requests for status conferences or for calendaring of cases involving guilty pleas shall be directed to the official responsible for calendaring cases.

(c) **Session calendar.** The official responsible for calendaring of cases shall prepare a session calendar in accordance with the provisions below:

(i) At least fourteen (14) days before the beginning of any session of superior court for the trial of criminal cases, there shall be filed with the clerk of superior court by the responsible official a calendar of cases scheduled to be heard at that session. The calendar may be organized according to the type of matter to be heard, but shall list all matters before the court during that session. A case may be added to the session calendar less than fourteen (14) days before the beginning of the session with the consent of both parties and the court or upon a finding of good cause by the court.

(ii) The session calendar shall indicate the day set for trial or other hearing of each case listed thereon and shall indicate the order in which the cases on the calendar will be called for trial or other hearing.

(iii) In establishing the order of cases for trial, the official preparing the calendar shall give priority to the oldest cases on the calendar, to cases in which the

defendant is in custody, and to cases in which the pretrial liberty of the defendant presents unusual risks.

(iv) The court shall call cases in the order listed on the calendar. No case on the calendar may be called before the day fixed by the calendar, or out of the order listed thereon, except by consent of both parties and the court or upon a finding of good cause by the court. Cases on the session calendar that are not reached when scheduled may be carried over to the next day or session or may be rescheduled to another day or session, as the court finds appropriate.

(v) All witnesses shall be subpoenaed to appear on the date listed for the trial or other hearing of the case in which they are witnesses. A defendant shall appear upon the initial calling of his or her case for trial or other proceeding at which his or her presence is required. Unless the court finds that good cause exists for requiring the defendant's continued presence, the court shall place the defendant on standby. A defendant placed on standby is not required to be present in the courtroom until his or her case is called for trial or other disposition. The defendant shall have a reasonable period of time to appear once his or her case is called for trial or other disposition.

(d) **Continuances.** The court may grant a continuance of any scheduled matter upon a showing of good cause.

(e) **Dismissal.** The prosecution shall not dismiss a case for the purpose of evading any matter scheduled pursuant to this section. Upon refile of the case by the prosecution, the defendant may file a motion alleging that the earlier dismissal was in violation of this section. The court shall hold a hearing on any such motion and shall dismiss the case with prejudice if the court finds that the earlier dismissal was taken in violation of this subsection. To the extent this statute conflicts with G.S. 15A-931, this statute controls.

(f) **Sanctions.** The court may impose such sanctions as it finds appropriate for the failure of any party to comply with any provision of this section.

(g) **Local rules.** In consultation with the District Attorney, Public Defender (if any), local bar, and other interested persons, the senior resident superior court judge in each judicial district may promulgate local rules consistent with this section.

Section 2. G.S. 7A-61 reads as rewritten:

The district attorney shall ~~prepare the trial dockets,~~ prosecute in the name of the State all criminal actions and infractions requiring prosecution in the superior and district courts of his prosecutorial district, advise the officer of justice in his district

Section 3. G.S. 15A-931 is amended by adding a new subsection to read:

(c) The prosecutor shall notify the official responsible for calendaring cases, and the defendant and his or her counsel, of any dismissal taken by the prosecutor no later than the end of the next business day following the dismissal. The clerk of court shall immediately notify the official in charge of the custody of any defendant known to be confined in any state or local facility of any dismissal of charges for which a defendant is being confined.

Section 4. G.S. 15A-952(f) reads as rewritten:

(i) To schedule a hearing on a pretrial motion, other than a motion that may be heard ex parte or a motion to modify or set conditions of pretrial release, the moving party shall contact the official responsible for calendaring criminal cases to obtain a date for the hearing of the motion. The moving party may obtain a hearing date for a motion before or after filing the motion, but the moving party must serve the motion on the opposing party and give notice of the hearing date to the opposing party at least fourteen (14) days before the hearing. The official responsible for calendaring criminal cases shall include the hearing on the session calendar as provided in G.S. 7A-49.3(c).

(ii) A motion to modify or set conditions of pre-trial release may be heard by any superior court judge authorized to hold such hearings. The court shall hear the motion no earlier than three (3) days and no later than ten (10) days after service of the motion on the prosecution; however, if no session of superior court is scheduled in the county within 10 days after service of the motion on the prosecution, the motion shall be heard on the first day of the next session.

(iii) The time periods set forth in this subsection (f) may be modified upon consent of both parties and the court or upon a finding of good cause by the court.

EXECUTIVE COMMITTEE

DONALD M. JACOBS
PRESIDENTPETER S. GILCHRIST, III
PRESIDENT-ELECTTHOMAS J. KEITH
VICE PRESIDENTTHOMAS D. HAIGWOOD
PAST PRESIDENT

EDWARD W. GRANNIS, JR.

REX GORE

JAMES L. DELLINGER

CHARLES W. HIPPS

*Conference of District Attorneys*127 WEST HARGETT STREET
SUITE 301

RALEIGH, N. C. 27601

PEG DORER
EXECUTIVE SECRETARY
TELEPHONE: 919/733-3484**Calendaring*****A Position Paper for the N.C. Conference of District Attorneys***

District Attorneys of North Carolina have been given the responsibility of managing the criminal docket in this state. In order to enable them to do that job, they have been given the authority to calendar cases for trial. Recently, some people have raised the question of whether such a system is "fair" to the people who have been arrested and are charged with a crime. What is "fair" to a victim or to society at large, may not always be perceived as "fair" to the person charged with violating our laws. A more appropriate question may be whether our courts provide a substantial measure of "justice" in this imperfect world in which we live. The District Attorneys of this State maintain that the present calendaring system does that. The current system produces justice that guards the rights of defendants without sacrificing the rights of our law-abiding citizens, doing so in a very cost-effective manner.

It is the position of the North Carolina Conference of District Attorneys (NCCDA) that any perceived problems caused by the present practice of the calendaring cases by the elected District Attorney can be remedied with minimal changes to the General Statutes. The person who is accountable to the public for management of criminal court cases should have the authority to calendar the cases, subject only to the constitutional guarantee of a fair trial. The Legislature has given the District Attorney that burden of accountability. We should maintain the authority of calendaring, subject to reasonable rules to insure that a defendant can get his case heard by a jury in an expedited way if he so desires.

How Can We Avoid Abuse of the Rights of Defendants by District Attorneys?

The North Carolina Academy of Trial Lawyers (NCATL), speaking for the criminal defense bar, takes the position that the only way to keep District Attorneys from abusing criminal defendants is to take away the District Attorney's responsibility for calendaring cases. The position of your District Attorneys is that minor changes in the present statutes can give the same results, if in fact defendants are abused under the present system as some trial lawyers would contend. To show how simple that process would be, we ask you to look at three issues that have been cited by the criminal defense

bar as potential chances for abuse to the rights of defendants and our proposals addressing each.

1. Getting a motion heard before a judge-- The defense bar suggests that their clients can not get justice now because the District Attorney controls when motions will be heard. The NCCDA suggests that something as simple as the following change would answer that complaint.

N.C. General Statute 15A-952 (amend by adding the following):

(f) Motions by either party shall be scheduled at a time agreed upon by the parties. If the parties cannot agree, a hearing shall be set for the next regularly scheduled session of criminal or mixed term of court occurring after ten business days following filing of the motion. A motion to set or modify conditions of pre-trial release must be set at the next regular session of criminal or mixed court, unless the parties agree to another hearing date.

The Court, in its discretion, may hear the motions before trial, on the date set for arraignment, on the date set for trial before the jury is impaneled, or during trial.

This section shall not prejudice either party's right to file motions after the hearing, so long as the filing complies with other sections of the General Statutes.

2. Defendants are being forced to sit in court too long awaiting trial-- The NCATL contends that the D.A.'s use the calendaring authority to make defendants repeatedly appear in court and sit around waiting for trial. Such practice they say, causes innocent defendants to plead guilty as a matter of convenience rather than wait for a trial. (It should be noted that less than 2.5 percent of cases in this State actually go to trial.) The District Attorneys propose the following to answer that complaint.

N.C. General Statute 7A-49.3 is amended by adding the following:

(c) A defendant shall be required to appear upon the initial calling of the calendar during a session of court. After the call of the calendar, the Court, in its discretion, upon motion by the defendant in open court, may place a defendant on standby.

3. Defendants whose cases are dismissed still sit in jail-- While this problems does not appear to be related to the authority to calendar cases, several occasions of a breakdown in notification of a dismissal have caused complaints. Both the D.A.'s and the criminal lawyers basically agree that the following would curb this problem.

N.C. General Statute 15A-931 is amended by adding the following:

(c) The prosecutor, after taking a dismissal, shall notify a defendant or his counsel, if represented, of such action by the end of the next business day following such

dismissal. The clerk of court shall promptly notify the official in charge of the custody of any defendant known to be confined in any State of local facility of the filing of a dismissal of charges for which the defendant is being held.

Should a Defendant Be Given the Right to Say When His Trial Should Be Set?

Criminal attorneys maintain that the D.A.'s should not have calendaring in part because it is used to keep innocent people in jail for long periods of time and delaying trials in order for a defendant to be placed in a weakened position. Their proposed remedy is either taking away entirely the D.A.'s authority to set a trial date, or installing a "trial by consent" system. The position of the D.A.'s is that a "trial by demand" statute would guarantee a defendant a right to a trial as fast as the court can provide one. The Conference offers the following as a way of insuring that defendants can have their right to a timely hearing.

N.C. General Statute is amended by adding the following:

(d) When a case has not otherwise been scheduled for trial after 60 days from a Defendant's arrest pursuant to an indictment, or from service of notice of indictment as required by statute, or appeal of a misdemeanor to Superior Court, upon motion by the Defendant at any time thereafter, the Senior Resident Superior Court Judge for the district may hold a hearing for the purpose of establishing a date for trial of defendant. The Court shall retain jurisdiction to modify a trial date upon motion by either party.

Conclusion

The Conference of District Attorneys (the 38 elected District Attorneys) proposes that the General Assembly consider the above proposals as examples of ways to address objections by the NCATL to the present calendaring system. The proposals would offer additional protection to defendants, but not jeopardize the historically cost-effective system we have in place now. They would have virtually no financial impact.

North Carolina only spends 3.9% of its budget on the District Attorneys and associated legal services as a percent of the total justice system. The average for the United States is 6.5%. As a result of the choice to spend conservatively on the prosecution of criminals, the average Assistant District Attorney in North Carolina handles 273 total crime index arrests, while the same person in New York handles 61, in Tennessee 143, in Virginia 169, and in Georgia 206. (When you exclude North Carolina, the average for the remaining four states is only 145 cases per Assistant District Attorney, just slightly over one-half the number of cases as in North Carolina.). Other than hard work, the key to the efficiency of our courts has been North Carolina's unique system of allowing the District Attorney to calendar cases for trial.

If Legislators make a radical change in our present system by dictating that the Senior Resident Superior Court Judge be responsible for the control of the calendaring of cases for trial, North Carolina will join the ranks of those states that spend considerably more resources than North Carolina. Will such a change in our system insure more "justice," or only "more expensive" justice?

The District Attorneys support constructive efforts to speed up the court process, insure Defendants are not deprived of fundamental rights, and to generally provide any needed safeguards designed to prevent abuse by any party in the criminal justice system. However, as long as we are being held accountable for the movement of cases through the system, we should also have the authority to manage those cases by retention of broad calendaring authority.

